Due service and receipt of a copy of the within is hereby admitted

this.....day of April, 1944.

.....

City Attorney, City of Los Angeles,

.....

Chief Assistant City Attorney, City of Los Angeles, for Department of Water and Power of the City of Los Angeles,

.....

Assistant City Attorney, City of Los Angeles,

.....

Special Counsel,
Attorneys for Petitioners.

.....

.....

Attorneys for Respondent,
Natural Soda Products Company.

(30)

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Supreme Court of the United States

October Term, 1943

No. 723

CITY OF LOS ANGELES, a municipal corporation, DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Petitioners,

vs.

NATURAL SODA PRODUCTS COMPANY, a corporation,

Respondent.

ON PETITION FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

PETITION FOR A REHEARING ON DENIAL OF CERTIORARI.

RAY L. CHESEBRO,
City Attorney,
S. B. ROBINSON,
Chief Assistant City Attorney for Water and Power,
SAMUEL POORMAN, JR.,
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NATURAL SODA PRODUCTS COMPANY, a corporation,

Respondent.

PETITION FOR A REHEARING ON DENIAL OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Come now the above-named petitioners City of Los Angeles and Department of Water and Power of The City of Los Angeles and present this their petition for a rehearing of the petition for certiorari in these causes.[1]

[1]We are advised that, impelled by the grave,—not to say ruinous,—consequences entailed by any application of the legal doctrine which, for the first time in legal history, has been engrafted upon the law of waters by the State court's judgment herein, the Irrigation Districts Association of California (an organization of over 100 irrigation, water, reclamation and drainage districts), representing a service area of more than four million acres (population in excess of five hundred thousand, and assessed valuation of more than one billion dollars), is about to apply to this Court for leave to file a brief as *amicus curiae* in support of this petition for a rehearing.

I.

Jurisdiction.

Petition for certiorari was filed and docketed February 23, 1944, and was denied March 27, 1944. This petition is filed within less than 25 days after such denial under **Rule 33.**

II.

Reasons for Petition for Rehearing.

On re-analysis, it is found that the petition for certiorari and the supporting brief in some instances failed to point out specifically, and in others failed to develop adequately, the following matters, certain thereof going to the jurisdiction and others to the merits:

The judgment of the Supreme Court of California deprives petitioners of their property without due process of law, in violation of the 14th Amendment of the Constitution of the United States, not only in the **four particulars** pointed out in paragraph (2) *infra*, but also in the **two additional** particulars noted in paragraph (3) *infra*.

The judgment of the *trial court* is based upon a finding that the **surplus** waters **not diverted** by petitioners in 1937 "were waters for which **[petitioners] could insure, and had, beneficial use"** [Respondent's Petition for Rehearing in the State Supreme Court, page 41]. Standing upon this finding, respondents **repeatedly disclaimed** any contention that petitioners were **obligated to find new beneficial uses** for such **surplus waters.** For example, in respondent's Reply to Appellants' Conspectus, at page 45, respondent declares: "It is

not true * * * that respondent * * * *contends* that the effect of Article XIV, Section 3 [of the Constitution of California] is to make it mandatory upon [petitioners] * * * **to find new and greater beneficial uses for water,"** but only that they are thereby "required to **beneficially use** water in their **existing facilities** rather than waste it." This *supposed* beneficial use was the presently **unneeded storage** thereof, both surface and underground, to conserve the surplus waters for future use by petitioners **and others.** It was the *effect* of this judgment at which petitioners directed their *first* constitutional attack.

Note that the *trial court's* judgment contains *no intimation* of an obligation on the part of petitioners to transport *surplus* water out of the watershed of its origin and to **waste** the same elsewhere. The *first departure* from this view of petitioners' duty was made by the *judgment of the State Supreme Court,* which fastened upon petitioners the additional obligation of **wasting** so much of this *surplus* water as could be transported to points of discharge on the Mojave Desert and into the Santa Clara River (thus entailing the acquisition of the necessary flowage rights), and then of *spreading* any *portion* of the surplus *not so wasted* upon lands in Owens Valley.

Obviously, therefore,

(1) Two distinct Federal questions arose during the progress of these causes through the State courts.

(a) The first thereof arose by reason of the **effect of the judgment** of the *trial court.*

(b) The second arose only by reason of the **more comprehensive effect of the judgment** of the *State Supreme Court.*

Accordingly, there were two distinct invasions of petitioners' constitutional rights, and petitioners in each instance raised the Federal question at the first opportunity and in the only manner at those respective times available to them under State practice, namely, (a) in respect of the first invasion, by their Opening Brief on appeal in the State Supreme Court, and (b) in respect of the second invasion, by their Petition for Rehearing by the State Supreme Court following its affirmance of the judgment below,—the first and only opportunity for its presentation in that Court.

On *five* occasions in their briefs on appeal prior to the judgment of the State Supreme Court, petitioners raised the Federal question, stating that the **effect** of the judgment of the *trial court* was to deprive them of their property without due process of law in violation of the due process clauses of the 14th Amendment to the Constitution of the United States and of the State Constitution, Article I, Section 13. After judgment by the State Supreme Court, not only was the same Federal question raised for a *sixth* time as against *that* judgment [Petition for Rehearing, page 16], but at the **then first opportunity,** there was *specifically* pointed out the **new and additional deprivation** of property **first effected** by the **judgment** of **that** court in rendering it **further obligatory** on petitioners **to acquire flowage rights,** as next hereinafter indicated. [For the particulars respecting these invocations of constitutional protection, see petitioners' Reply to Respondent's Statement in Opposition to Motion for Leave to Proceed, *etc.*, pp. 2-10.]

The District Court of Appeal had no occasion to consider the constitutional question because its decision was in

favor of petitioners upon the wholly distinct grounds set forth in its opinion. That its judgment was *in strict conformity* to the *prior* law of California as established by the decisions of its highest court, is demonstrated in our Petition for Certiorari and the supporting brief herein.[2]

(2) On the one hand, the **effect** of the judgment of the *trial court* was to impose upon petitioners, in favor of respondent, *four several duties* to dispose of *surplus* water *not* needed by petitioners, namely,—

(a) To operate their *Aqueduct* **to capacity;**

(b) To dispose of **surplus** water by **spreading** upon their own lands;

(c) To operate their *reservoirs* **to capacity;** and

(d) To operate the **regulatory** *reservoir* (Tinnemaha) for the **storage** of *surplus* water, thereby *destroying* its *function* as a stream regulator at the *very time* when the same is *needed.*

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[2]In addition to the cases cited in our Brief on Certiorari demonstrating (as we think and as the District Court of Appeal, in reversing the judgment, held), that such a ruling as that whereof review is sought, is *diametrically opposed* to the *prior* law of California, we cite *Moore v. City of Los Angeles,* 72 Cal. 287, only now discovered. There it was contended by appellant that "The defendant, being the owner of the river-bed, and having the *right to divert the water,* as a private corporation, was bound to so control its property that it could work no injury on anyone." This contention, almost identical with that of respondent herein, was rejected, the State Supreme Court saying:

> "The incorporated city was not responsible as a private corporation, from the fact that it owned the bed of the river, and the right to sell the water therefrom to its citizens, and there is nothing contained in its charter which could impose such an obligation upon it, as the duty of protecting private property from sudden and unlooked for floods, which might at any time fill the stream to overflowing."

(3) On the other hand, the **effect** of the judgment of the *State Supreme Court* was **not only** to impose on petitioners, in favor of respondent, *these four several duties*, but the **two further distinct and more onerous duties**, namely,—

(a) That of **acquiring flowage rights** in lands on the *Mojave Desert*, and

(b) That of **acquiring flowage rights** in the channel of the *Santa Clara River*,—

to enable petitioners to dispose of **further** *surplus water* by **wasting** the same on said desert and into said river channel.

(4) As such Federal questions could **not** be raised by *pleading*, *now* to rule that the raising thereof *after judgment* was not *timely* would *itself* be a denial of constitutional protection.

(5) Even if the raising of the Federal question had been too late in respect of the *effect* of the judgment of the *trial court*, (because it came after motion for a new trial), it was *unquestionably timely* in respect of the *effect* of the judgment of the *State Supreme Court*, which judgment (after *reversal* of the *trial court* by the District Court of Appeal *on the merits*, without reference to the constitutional question raised), for the **first** time **injected** into the causes the **two** *new and distinct* duties of **acquiring such flowage rights** on the Mojave Desert and in the Santa Clara River, where (as was *affirmatively*

proved without *contradiction*), petitioners have no such flowage rights.[3]

(6) The respective judgments of the *trial court* and of the Supreme Court of California having been a **total departure** from its **own** and **all other** decisions, American and English (except the utterly discredited *Kray v. Muggli*, 84 Minn. 90 [see Brief on Certiorari, page 69, footnote 4]), these causes present that element of **surprise** that *of necessity* (for lack of earlier opportunity) permits petitioners to raise said several Federal

---

[3]Respondent has made the point that under Rule VIII, Section 2, of the state appellate courts, the Federal question was not properly raised because of lack of "a statement of the question involved * * * set forth on the *first page* of the Appellants' Opening Brief." [Statement of Respondent in Opposition to Motion for Leave to Proceed, *etc.*, page 2, footnote 1.] There are two answers to such point:

(a) The Federal question was *not* an *original* one in the causes, but was first imported thereinto by the successive judgments,—first that of the *trial court* and later that of the state Supreme Court. It was perfectly proper, therefore, to raise it in the text of Appellants' Opening Brief to meet anticipatorily an *adverse ruling* on the *primary* points printed on the first page of the Opening Brief.

(b) Rule VIII does not, by its terms, apply to a petition for a rehearing, nor could it be made to so apply in respect of a point first imported by the judgment as to which a rehearing is sought.

Moreover, it would be an extraordinary thing to deprive a litigant of constitutional protection for failure to observe a rule of convenience, prescribing the *mechanical arrangement of Opening Briefs*. If the state court gave attention to the primary points printed on the first page of petitioners' Opening Brief, they could not have escaped notice of the Federal question that was inherent in an adverse ruling thereon as was specifically pointed out in the text of the briefs.

We submit that it is not competent for a state court, by its rules, either (a) to curtail the jurisdiction of this court, or (b) to modify the Judicial Code, or (c) to limit the operation of the Constitution of the United States.

questions *after* the respective *judgments* by which they were successively *injected into the causes.*[4]

Although petitioners raised the point in their application for certiorari herein [pp. 3, 14, 34, 80-81], it will be borne in mind that they had on six different occasions in the State courts claimed Federal rights, thereby invokng "their advertent decision thereon."

(7) The reversal of the judgment of the trial court by the District Court of Appeal is a demonstration that petitioners *could not reasonably have anticipated* either that judgment, or the affirmance thereof by the State Supreme Court after such reversal.

(8) The wide-spread, ruinous, and recurrent consequences, *in practical application,* of the doctrine laid down by the State Supreme Court,—not merely to petitioners, but *to every appropriator of water* in California,—should

---

[4]In Robertson and Kirkham on "Jurisdiction of the Supreme Court of the United States," section 73, page 123, reads as follows:

> "§ 73. - - - *'Surprise' Cases.* In *Saunders v. Shaw,* [244 U. S. 317, at 320], it was held that where it is the *act* of the *state supreme court itself,* done in *its opinion and decision* and coming *unexpectedly* at the end of the proceeding when appellant *no longer had any opportunity* to add to the record, which denies appellant a federal right, and thus, for the *first* time, *imports* into the case the *federal question* sought to be reviewed, a raising of the question *for the first time* in the assignment of errors accompanying a *writ of error* (now appeal) to the Supreme Court [of the United States] will be deemed to be *timely.* There is *no* apparent reason why the principle of this rule should *not* apply to cases reviewable on *certiorari,* in which event, in a like case save that the questions involved are such as to be reviewable on certiorari rather than appeal, a raising of the federal question *for the first time* in a petition for certiorari would be held *timely.*"

move this Honorable Court, in its sound discretion, *to take jurisdiction,* for the purpose of correcting the State court's manifest error, in conformity with the practice so recently pursued as 1942 in *Memphis Gas Company v. Beeler,* 315 U. S. 649, on appeal from the Supreme Court of Tennessee.[5]

A correct ruling herein *on the merits,* in accordance with **all prior unquestioned authority** (including the decisions of the Supreme Court of California), and determining (a) the *obligations* of an *appropriator* of water to a *downstream proprietor,* (b) the *extent* of the *rights* that may be *acquired by estoppel* or as a *reciprocal easement,* and (c) the *possibility* or otherwise of any such rights *arising* in favor of the downstream proprietor who, before acquiring his property, merely **"assumed"** (*without any inquiry whatever*), that the lake constituting the *natural place of discharge* of the stream from which the appropriator diverts, **would continue dry** because it was dry *then,—i. e., after 12 years' unprecedented drought,*—must have resulted in a different disposition of these causes, to wit, a reversal of the judgment of the trial court.

---

[5]In the opinion of the court in that case, delivered by Mr. Chief Justice Stone, it is said:

> "Since it does *not* appear that the validity of the statute was either *drawn in question* or *passed upon* in the *trial* court or *deemed* by the *state supreme* court *to be in issue,* we must dismiss the *appeal* for want of jurisdiction. Treating the papers on which the appeal was allowed as a petition for writ of certiorari, * * * certiorari is *granted,* and we proceed to *consider the merits* of the case." [p. 651.]

III.

The Controlling Question.

In a nutshell, the theory of the state court's decision is (a) that petitioners had pursued a *course of conduct* (*i. e.*, continuously diverting the **whole** flow of Owens River), upon which the respondent had a *right to*, and *did, rely;* (b) that *in 1937*,—specifically from February to June, inclusive, of that year,—petitioners **changed** that *course of conduct;* and (c) that, **by reason of such change,** respondent was damaged.

The discharge from Owens River into Owens Lake is the **resultant** *of two factors,* (1) *stream flow* at Intake, and (2) petitioners' *diversions* therefrom. The lake discharge is the **residual** water *left in the river channel.* If petitioners **past** diversions from *1919 to 1936* be the **standard of conduct** by which petitioners' *future duty* to divert was *imposed* and **measured,** then there was *no breach* of such duty in 1937 since their diversions, both during **that** year and also during **the months thereof** here in question (February to June, inclusive), **exceeded the maximum** *during any prior corresponding period* and, by much more, the respective averages for the *prior* 18 years of drought (1919-1936).

Therefore, the *termination* in 1937, of the prior *dry condition* of Owens Lake was *due*,—**not to any deviation** by petitioners from such *standard of conduct*,—but to the **increase** in the flow of Owens River upon the recurrence, *after 18 years' unprecedented drought,* of a year of *greater than normal precipitation.* Obviously, you can-

not, *with such increase*, have the lake discharge remain as low as theretofore if petitioners' *diversions* in 1937 either (a) **continued** in *volume* merely **equal** to those in prior years, or (b) were **not increased** by the *same* amount as was the *river flow*.[6]

The court's decision makes petitioners responsible,—**not** for **deviation** from *their* **prior** *conduct*,—but for the **increased precipitation** in the watershed. Assuming *ever* **constant** *river flow* and *ever* **constant** *diversions*, it would be no more reasonable to hold petitioners *responsible* for a *rise* in the *lake level* due to **lowered evaporation** on Owens Lake in a year of continuous low temperatures and cloudy weather. The fallacy in logic in both instances is a not uncommon one,—namely, that of reasoning *post hoc*, **ergo** *propter hoc*.

As shown by the **uncontradicted evidence** introduced by *respondent*;—

(a) Petitioners' *prior* course of *conduct* was to *divert* from Owens River **only that portion** of the flow there-

---

[6]The factual data is set forth in Tables I and II in our Brief on Certiorari [pp. 42-43]. In Column (f) of Table II,—that table covering the period from February to June, inclusive, in each year from 1906 to 1937,—it appears that petitioners' diversions from Owens River in those months of **1937 were 126,000 acre feet** as contrasted with a **maximum prior diversion of 116,000 acre feet** (1922), and diversions during the *five years preceding 1932* (when respondent acquired its property on Owens Lake) ranging from a **minimum of 62,000** to a **maximum of 101,000 acre feet.**

See, in this connection, *Great Northern Railway Co. v. Washington*, 300 U. S. 154, at 165, declaring that "when the asserted [Federal] right has been denied, this court is [**not**] concluded by a mere finding of fact or a mixed finding of law and fact made by the state court. We have repeatedly held that in such case **we must examine the evidence** to ascertain whether it **supports** the decision **against the claim of federal right.**"

of which was *from time to time required for their needs,* and that at all times when that flow was *in excess* of such needs, the **surplus** followed its **natural course** down the *channel* of Owens River to its **natural place of discharge** into Owens Lake.[7]

(b) Petitioners **did not change** this course of conduct in 1937, but, on the contrary, in pursuing that **identical course** of conduct, diverted both in the year 1937, as also in the months thereof from February to June, inclusive, here in question, **more water than** they had **ever theretofore** diverted during any corresponding period; and

(c) The damage suffered by respondent was **not caused** by any **change** in petitioners' **course of conduct** (for there was **no such change**), but **solely** by the fact that the *excess* of the *natural* river flow (which whenever there was **any** had **always** flowed into Owens Lake), was **far greater** than any excess thereof that had been present in Owens River during the period of respondent's prior operations, although **not greater** than, nor **even as great as,** in *each* of the years **preceding the drought.**

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[7]The fact that, by reason of the worst and most prolonged **drought** ever experienced in the watershed during **17 years prior** to 1937, there was **no such excess,** and that, in consequence, Owens Lake became relatively dry, is a circumstance **wholly irrelevant** as well as completely **confusing** and **misleading.**

The opinion of the District Court of Appeal (reversing the judgment of the trial court) exhibits a clear apprehension of this factual situation, but that of the Supreme Court of California **completely misses the determinative facts.** But for the substitution by the latter court of a **supposititious** state of facts by eliminating the controlling factors in the **true** state of facts, the court could **not** (as we confidently believe) have fallen into error in respect of the *controlling points of law;* for we cannot conceive of its harboring an intention to change the law (as said decision *does*), by *establishing* the following as principles:

(1) That an *appropriator* of the water of a stream is **obligated to divert** therefrom water for which he has **no beneficial use,** disposing of this *unused* water *at his own expense,* because (a) of *resulting benefits to a downstream proprietor* and (b) because he has *unused conduit capacity* sufficient to enable him so to do;

(2) That an appropriator who has diverted water over a series of years, in amounts **uniformly determined** *by the demands served* by him, using *only part* of the *capacity* of his conduit built in *anticipation* of the *growth of those demands,* is **obligated**—*not* merely to *continue diversions* measured either by *current demands* or by his *maximum prior diversions,*— but **to increase his diversions** by such amount in *excess* of said *demands* and of his *prior diversions* as, within his surplus conduit ca-

pacity, may be flowing in the stream, *merely* for the *benefit* of such *downstream proprietor;*

(3) That the **"waste"** of water prohibited by the State Constitution is inclusive of the **natural** discharge of water into a land-locked saline lake containing valuable mineral deposits, and imposes the *burden* on the appropriator of water from a stream *naturally feeding that lake* to take such measures as will *prevent the discharge thereinto* of the **surplus** *natural stream flow* for which he has **no use,** by diverting the same (in addition to the water *adequately* serving his needs), and **wasting** such *surplus* elsewhere, for the benefit of a private operator extracting minerals from the lake brines;

(4) That an appropriator of water is **estopped** to deny an *obligation* on his part to divert **293,000 acre feet** of water in a given year (1937),—or **151,000 acre feet** from *February to June,* inclusive, of that year,—by his *prior conduct* in diverting *annually,* over a series of years (1919-1936), a **minimum of 144,000** (1925) and a **maximum of 264,000** acre feet (1922),—or from *February to June,* inclusive, of these respective years, a **minimum** of 46,000 (1925) and **maximum of 105,000** acre feet (1927); and that a downstream proprietor may *thereby* **acquire,** as against such appropriator, a **right,** —*not measured* by, *nor commensurate* with the **conduct** of the appropriator **creating** such **right,**—but **transcending** the same by at least the **difference** between his **maximum prior diversions** (or his *current* needs)

and the **natural stream flow** that can be accommodated within the *capacity* of his aqueduct.[8]

(5) That said appropriator, in order to *dispose* of such *surplus water* **must,** at his peril, **acquire** the necessary lands and/or reservoirs and/or the flowage rights in any available stream, *at his own expense,* and *utilize* the same and the excess capacity of his conduit to effect **unneeded storage,** both surface and underground, in excess of any *prior* storage *practiced* by him, and also must

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[8]For the rule that one successfully pleading an equitable *estoppel* against another thereby *"acquires some* **corresponding** *right,* either of property, of contract, or of remedy," see Pomeroy Eq. Jur. [4th Ed.], Sec. 804, p. 1642. The author (pp. 1636-1637, footnote, styling the opinion of Perley, C. J., in *Horn v. Cole,* 51 N. H. 287, "an admirable and accurate presentation of the true reasons and grounds of the doctrine"), quotes therefrom in part as follows:

> "In this equitable *estoppel,* the party is forbidden to set up his legal title because he has *so conducted* **himself,** that to do it would be contrary to equity and good conscience."

Again, at page 1647, the author cites *Cornish v. Abington,* 4 Hurl. & N., 549, where Pollock, C. B., says:

> "If any person, by a course of conduct, or by actual expressions, *so conducts* **himself** that another may *reasonably infer the existence of an* **agreement or license,** it has the effect that the party using the language, or who *so conducted* **himself,** can **not** afterwards gainsay the reasonable inference *to be drawn from the words or* **conduct."**

Finally, see the author's quotation (p. 1651) from *Stevens v. Dennett,* 15 N. H. 324, of the statement that the doctrine of equitable estoppel **constitutes an** application of the maxim that "when one of two innocent persons must suffer *he shall suffer* who **by his own acts** occasioned the confidence and loss." Of this passage, Mr. Pomeroy says: "The judge [Foster, J.] has struck the 'bed rock' of *universal principle* upon which all instances of estoppel **must be founded,** if they are to stand with any firmness."

Note that, in the foregoing passages, it is the **conduct** of the party *against* whom estoppel is pleaded which is the *sole* matter of importance, and **not** in any case the **resultant** of that **conduct** and **natural forces** over which he had *no control.*

waste water both by the means indicated and also by indirect discharge into the sea—*all* for the *benefit* of such *downstream proprietor* and *irrespective of the constitutional guaranties* against such *spoliation*.

That each of these propositions is opposed not only to prior rulings of the Supreme Court of California, but also to the unvexed current of American and English authority, is fully demonstrated in our brief on certiorari herein, pages 36-63.

IV.

Public Importance.

The gravity of the results and the shocking injustices to appropriators of water that will flow from the judgment of the state court, call for its review herein upon a fuller presentation than is permissible in the application for certiorari.

Already there are in suit claims against petitioners in excess of one million dollars (in addition to the sum here involved) for damages suffered exactly as in these causes in the year 1938, when the **surplus** water of Owens River that flowed into Owens Lake was **249,000 acre feet,**—*i. e.*, over **five times** the volume of such flow **from February to June, inclusive, 1937.** Assuming *full continuous operation* of the Aqueduct *at capacity*, only 40,000 or 50,000 acre feet of this **surplus** could have been accommodated in the Aqueduct, over and above petitioners' then actual diversions.[9] This is but one example of the *recurrent claims* to which petitioners will be subjected by

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[9]Petitioners' diversions in 1938 were *in excess* of those in 1937, the *highest* then on record.

the *uncontrollable* **forces of nature** *determinative* of the *volume* of the flow of Owens River from time to time.

If a State court may mulct a litigant in damages, **for which he is in nowise responsible,** by the simple expedient of **substituting** for the *actual and uncontradicted facts in evidence,* a **supposititious state of facts** wherefrom **all of the undisputed controlling facts are omitted,** the guaranty of the 14th Amendment against such spoliation—enforceable ultimately only by this Honorable Court,—will take its place in the category of empty promises.

Conclusion.

For the foregoing reasons, petitioners respectfully pray that a rehearing be granted; that upon further consideration the Order of March 27, 1944, denying the petition for certiorari herein, be revoked; and that the writs of certiorari issue.

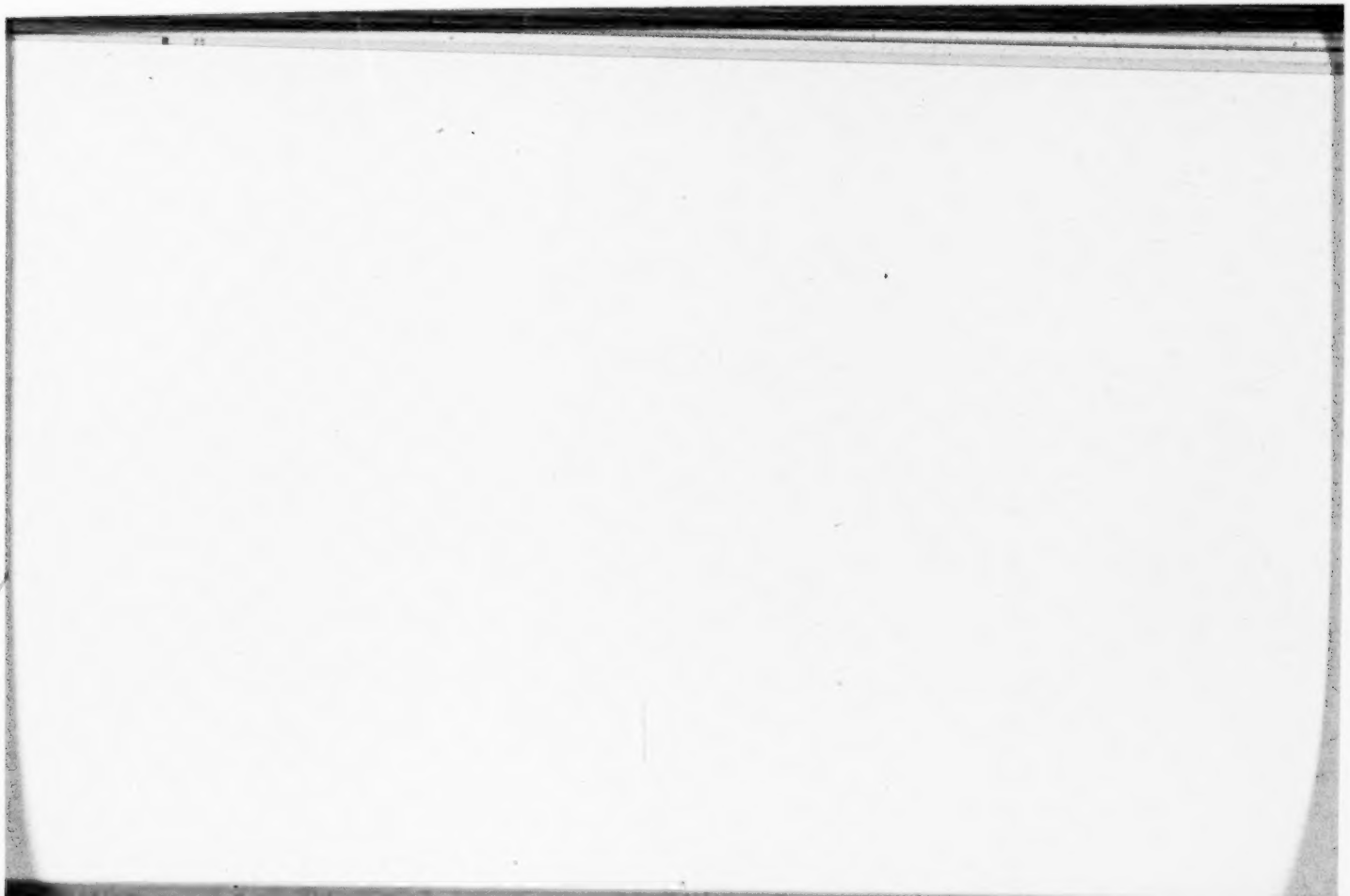
Dated at Los Angeles, California, April 7, 1944.

Respectfully submitted,

RAY L. CHESEBRO,
City Attorney,
S. B. ROBINSON,
Chief Assistant City Attorney for Water and Power,
SAMUEL POORMAN, JR.,
Assistant City Attorney,
A. E. CHANDLER,
Special Counsel,
By SAMUEL POORMAN, JR.,
Counsel for Petitioners.

I, Samuel Poorman, Jr., counsel for the above-named petitioners, City of Los Angeles and Department of Water and Power of the City of Los Angeles, do hereby certify that the foregoing petition for rehearing of these causes is presented in good faith and not for delay.

SAMUEL POORMAN, JR.,
Attorney for Petitioners.



Service of the within and receipt of a copy thereof is hereby admitted this.....day of April, A. D. 1944.

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4-12-44—75